

No. 80310-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

HENRY GOSSAGE,

Petitioner.

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

2008 JUN -6 PM 4:56

ON REVIEW FROM THE COURT OF APPEALS, DIVISION ONE

SUPPLEMENTAL BRIEF OF PETITIONER

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SUPREME COURT
STATE OF WASHINGTON

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A. STATEMENT OF THE CASE

Henry Gossage has been crime-free for almost 17 years, 13 of which he has spent in the community. He successfully completed sex-offender treatment after entering a guilty plea in 1992 for crimes committed against his stepdaughter.¹ CP 20. At the sentencing hearing on May 29, 1992, Mr. Gossage's attorney submitted a recommendation which stated, in part:

Rarely, in my almost quarter of a century of practice, have I met anyone who has been as [a]ffected as Mr. Gossage is by this incident. He recognizes fully that there is nothing he can ever do to make up for his acts towards his daughter. He is presently in treatment with Michael Comte and Associates and appears to understand fully the gravity of his actions. He is attempting to grapple with the reasons for the offenses. Mr. Gossage is into the therapy program with full vigor and attempting to try to understand what he has done. He has expressed to me great remorse, not for his own situation, but for what he has done to his family.

CP 63-64. Consistent with his attorney's representations, Mr.

Gossage rehabilitated himself: He completed treatment at Twin

Rivers and never again committed so much as a misdemeanor, let

alone a felony. CP 1-4, 20-21, 29-32, 37-39.

Also at the May 29, 1992 sentencing hearing, the court ordered to Mr. Gossage to pay a \$100 victim penalty assessment,

¹ On April 16, 1992, Henry Gossage pled guilty to two counts of incest in the first degree, one count of rape in the third degree, and one count of attempted incest in the first degree. CP 46-61.

\$85.50 in court costs, and restitution to be determined. CP 7. Mr. Gossage was ordered to avoid contact with the victim for 10 years, and was notified of his statutory duty to register as a sex offender. CP 8, 10. On August 31, 1992, the court ordered restitution in the amount of \$2,374.88. CP 65.

Mr. Gossage served his term of incarceration and was transferred from total confinement to work release in June of 1995. CP 20. He was transferred to community custody in Thurston County on October 5, 1995, and began paying his legal financial obligations. CP 21, 37-39. He has been registered as a level 1 (lowest-risk) sex offender for 13 years. CP 21.

On November 4, 2003, the Department of Corrections ("DOC") terminated supervision of Mr. Gossage. CP 17. The Department noted that although Mr. Gossage had paid \$990.50 toward his legal financial obligations, he had accrued \$2,451.10 in interest, and thus owed \$4,020.98 when DOC terminated supervision. CP 18. Mr. Gossage attempted to return to his pre-conviction profession as an industrial hygienist, but the Office of Personnel Management rated him ineligible for the position, partly because he had not finished paying restitution. Gossage v. Office of Personnel Management, 163 Fed. Appx. 909 at 7 (2006).

The judgment ordering Mr. Gossage to pay legal financial obligations expired in 2005. Although the State could have petitioned the sentencing court to extend the judgment and jurisdiction over Mr. Gossage for another 10 years pursuant to RCW 9.94A.760, it did not do so. The no-contact order entered as part of the sentence also expired. CP 8.

On December 8, 2005, Mr. Gossage petitioned pro se for a certificate of discharge, restoration of civil rights, relief from firearms disability, and relief from registration. CP 20-21. He attached appendices showing that DOC had terminated supervision and that he had been living in the community crime-free for over 10 years. CP 22-43. On April 18, 2006 the superior court denied the motion without a hearing. CP 44.

On appeal, Mr. Gossage argued that he must be issued a certificate of discharge because no sentencing requirements remain. He finished his term of confinement and completed community custody. The no-contact order expired, and the duty to register as a sex offender constitutes a separate statutory requirement, not a sentencing condition. Mr. Gossage regularly paid his legal financial obligations until the order expired. Thus, no

sentencing conditions remained, and the sentencing court should have discharged Mr. Gossage under RCW 9.94A.637.

Mr. Gossage also argued that he should have been granted an evidentiary hearing on his petition for relief from the duty to register. In his pro se statement of additional grounds, Mr. Gossage argued that the restitution order was void because it was entered after the 60-day limit, and that his right to possess firearms should be reinstated.

The Court of Appeals rejected Mr. Gossage's arguments, disagreeing with this Court's prior opinions stating that a restitution order expires or becomes void if the sentencing court does not extend the judgment before termination of the 10-year period. The Court of Appeals held that even though the sentencing court did not order an extension, the judgment did not really expire because Mr. Gossage did not finish paying his LFO's during the 10-year period. Thus, Mr. Gossage was not entitled to be discharged. State v. Gossage, 138 Wn. App. 298, 156 P.3d 951, 953 (2007).

The Court of Appeals also held that the trial court was not required to hold a hearing on Mr. Gossage's petition for relief from the duty to register, that Mr. Gossage did not qualify for

reinstatement of firearm rights, and that he failed to preserve the issue of the untimely entry of the restitution order. Id. at 953-54.

Mr. Gossage asks this Court to hold that he is entitled to a certificate of discharge under the plain language of the statutes in question. In the alternative, he asks this Court to hold that he is entitled to a certificate of discharge even if the statutes are ambiguous, because they should be interpreted to promote the legislative goals of rehabilitation and reintegration.

Mr. Gossage also asks this Court to hold that the trial court must hold a hearing on his petition for relief from the duty to register. Finally, Mr. Gossage requests that this Court address the issues he raised in his pro se briefs.

B. ARGUMENT

1. MR. GOSSAGE MUST BE ISSUED A CERTIFICATE OF DISCHARGE BECAUSE NO SENTENCE REQUIREMENTS REMAIN.

a. Under the plain language of the statutes, the sentencing court must discharge Mr. Gossage because it did not extend the criminal judgment beyond the expiration date. “The primary purpose of statutory construction is to give effect to the legislature’s intent.” City of Bellevue v. E. Bellevue Cmty. Council, 138 Wn.2d

937, 944, 983 P.2d 602 (1999). Legislative intent is determined mainly from the language of the statute itself. Id.

If the language of a statute is plain and clear, the court must apply the language as written. In re Personal Restraint of Sappenfield, 138 Wn.2d 588, 591, 980 P.2d 1271 (1999). “Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

The language used in the statutes addressing legal financial obligations and certificates of discharge plainly indicates that Mr. Gossage must be discharged. The “LFO” statute provides, in relevant part:

[L]egal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender’s release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victim’s assessments.

RCW 9.94A.760(4).² Consistent with the above language, this

² Similarly, the restitution statute provides, “For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court’s jurisdiction for a term of ten years following the offender’s

Court has held that where the superior court does not "extend the criminal judgment" as allowed under RCW 9.94A.760(4), "that order becomes void." Sappenfield, 138 Wn.2d at 594.

It is undisputed that the criminal judgment in Mr. Gossage's case was not extended beyond the 10-year period following release from confinement. Gossage, 156 P.3d at 953. Thus, as in Sappenfield, the order to pay LFO's "expired" and is now "void." See Sappenfield, 138 Wn.2d at 594. Because the no-contact order also expired, no sentencing requirements remain. CP 8.

When no sentencing requirements remain, the sentencing court must discharge the offender. RCW 9.94A.637. The discharge statute provides, in relevant part:

When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

RCW 9.94A.637(b)(ii). The legislature's use of the word "shall"

release from total confinement or ten years subsequent to the entry of judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. . . ." RCW 9.94A.753(4). Restitution is a subset of legal financial obligations, or "LFO's." RCW 9.94A.030(28).

means that discharge is mandatory if no sentencing obligations remain. See Rios v. Wash. Dep't of Labor & Indus., 145 Wn.2d 483, 501 n.11, 39 P.3d 961 (2002). Because the criminal judgment in Mr. Gossage's case expired and the order to pay LFO's is void, there are no longer any "legal financial obligations under the sentence," and discharge is required. RCW 9.94A.637(b)(ii).

The Court of Appeals disagreed, and took issue with this Court's reading of the statutory language in question. Specifically, it disagreed with this Court's statement that "[i]f a court's jurisdiction over a restitution order lapses under [the statute], that restitution order becomes void." Gossage, 156 P.3d at 953 (quoting Sappenfield, 138 Wn.2d at 594). According to the Court of Appeals, "[t]he statement in Sappenfield is dicta, is supported by no cited authority, and we do not believe the court meant to say the order disappears from all notice." Gossage, 156 P.3d at 953. Therefore, the Court of Appeals held that although the sentencing court did not extend the judgment, "Gossage is not entitled to a certificate of discharge." Id.

But this Court has properly construed the plain language of the relevant statutes, and the Court of Appeals' assertion to the contrary should be rejected. The LFO statute's provision that "the

superior court may extend the criminal judgment,” implies that if not extended, the criminal judgment ceases to exist. See RCW 9.94A.760 (4). That is consistent with this Court’s holding in Sappenfield that the order “expires,” or becomes “void.” Sappenfield, 138 Wn.2d at 594.

The language of the restitution statute – “the superior court may extend jurisdiction under the criminal judgment” – similarly supports Mr. Gossage’s position. RCW 9.94A.753(4). First, this phrase must mean the same thing as the similarly worded phrase in the LFO statute, because restitution is a subset of LFO’s. RCW 9.94A.030(28). Second, courts have consistently understood the termination of a sentencing court’s jurisdiction to be synonymous with discharge.³ There is no question that the sentencing court no longer has jurisdiction over Mr. Gossage. Thus, Mr. Gossage must be issued the certificate so stating. RCW 9.94A.637(b)(ii).

³ See, e.g., State v. Zabroski, 56 Wn. App. 263, 267, 783 P.2d 127 (1989) (“The court retains jurisdiction over [the defendant] until it affirmatively discharges him”); State v. Neal, 54 Wn. App. 760, 763, 775 P.2d 996 (1989) (“We hold that jurisdiction continues over an offender sentenced under RCW 9.94A.120(5) until the offender secures a formal certificate of discharge”); State v. Miniken, 100 Wn. App. 925, 927, 999 P.2d 1289, rev. denied, 142 Wn.2d 1009, 16 P.3d 1267 (2000) (Effect of certificate of discharge is to “terminat[e] the sentencing court’s jurisdiction to enforce the requirements of the sentence;” certificate of discharge properly denied because sentencing court retained jurisdiction to enforce a no-contact order).

The State argues that the sentencing court should not discharge Mr. Gossage even though the criminal judgment expired. But the State cannot have it both ways. If it wanted to continue collecting LFO's from Mr. Gossage, it could have petitioned the court to extend the judgment another 10 years. Its decision not to do so constitutes completion of the criminal case. Whether the victim may continue collecting restitution through civil means is immaterial to the question of whether Mr. Gossage must be issued a certificate of discharge from the criminal case. Under the plain language of the statutes, Mr. Gossage is entitled to a certificate of discharge.

b. In the alternative, if the statutes are ambiguous, the sentencing court must discharge Mr. Gossage to support the Legislature's goals of rehabilitation and reintegration. As stated above, the unambiguous language of the LFO and discharge statutes requires that Mr. Gossage be provided a certificate of discharge. However, even if the statutes are ambiguous, the rules of statutory construction lead to the same result.

When legislative intent is not clear from the language of the statute, a court may consider extrinsic evidence of that intent. Department of Transp. v. State Employees' Ins. Bd., 97 Wn.2d 454,

458-59, 645 P.2d 1076 (1982). Courts must also apply the rule of lenity, under which statutory ambiguities are to be resolved in favor of criminal defendants. In re Personal Restraint of Sietz, 124 Wn.2d 645, 652, 880 P.2d 34 (1994).

Providing a certificate of discharge upon termination of the sentencing court's jurisdiction over the offender is consistent with the rule of lenity and furthers the legislature's goals of rehabilitation and reintegration. The Court of Appeals erred in considering only one purpose of the relevant statutes – saving costs. Gossage, 156 P.3d at 953. Although saving costs and collecting revenue are indeed legislative goals, the Legislature has also strongly indicated its intent to promote rehabilitation and prevent recidivism. See RCW 9.94A.010(5) (one purpose of the Sentencing Reform Act is to “[o]ffer the offender an opportunity to improve him or herself”); RCW 9.94A.010(7) (another purpose is to “[r]educ[e] the risk of reoffending by offenders in the community”).

The legislature's declaration in RCW Chapter 9.96A similarly stresses the importance of fostering individual improvement and facilitating successful reentry into society:

The legislature declares that it is the policy of the state of Washington to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the

responsibilities of citizenship, and the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to rehabilitation and the assumption of the responsibilities of citizenship.

RCW 9.96A.010.

The chapter addressing the Department of Corrections reveals the same goals. RCW 72.09.010, for example, provides that one objective of the corrections system is to “positively impact offenders by stressing personal responsibility and accountability and by discouraging recidivism.” RCW 72.09.010(3). Another is to encourage individuals to work, “and through their efforts benefit both themselves and the community.” RCW 72.09.010(5)(b). The system should also provide “opportunities for self improvement.” RCW 72.09.010(5)(c). The Legislature notes that “[s]ince most offenders return to the community, it is wise for the state and the communities to make an investment in effective rehabilitation programs for offenders.” RCW 72.09.010(6). Other statutes are in accord. See, e.g., RCW 72.09.270 (requiring Department of Corrections to develop “individual reentry plans” for offenders); Laws of 1995 1st Spec. Sess., ch. 19, § 1 (one purpose of RCW 72.09.450 is “to reduce offender recidivism”); In re Personal Restraint of Smith, 130 Wn. App. 897, 903, 125 P.3d 233 (2005)

(although the state has an interest in containing corrections costs and recouping debt, it also “unquestionably has an interest in reducing recidivism and in fostering an inmate’s return to the community”).

Issuing a certificate of discharge promotes these legislative goals. For example, one component of successful reentry is reinstatement of civil rights. A certificate of discharge restores the right to vote, RCW 29A.08.520(2)(a), and the right to serve on a jury. RCW 2.36.070(5); RCW 9.94A.637(4).

Another component of successful reentry is obtaining employment. An outstanding criminal judgment often frustrates a job seeker’s efforts. But once an individual receives a certificate of discharge, he can eventually move to vacate his conviction. RCW 9.94A.640. The motion may be granted if the individual did not commit certain types of offenses and if he has remained crime-free for a certain number of years. See id. After that point, “[f]or all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime.” RCW 9.94A.640(3). Thus, issuing a certificate of discharge

supports the Legislature's goals by improving an individual's likelihood of procuring employment.

The State's reading of the statutes is not only contrary to their plain language, but also contrary to the Legislature's goals of rehabilitation and reintegration. Under the State's theory, a sentencing court does not discharge an offender even after DOC terminates supervision and the sentencing court's jurisdiction lapses, unless the individual was able to comply fully and perfectly with every condition before time ran out.

This reading leads to absurd results. For example, an offender whose sentence prohibited him from drinking alcohol while under supervision, but who drank one beer while on community custody, would never be issued a certificate of discharge. An offender who was ordered to stay out of Kent while under supervision, but who crossed the city line one day, would never be issued a certificate of discharge. People like Mr. Gossage, who defy the odds, rehabilitate themselves, and remain crime-free for over a decade, would never be issued a certificate of discharge. The State should be supporting people like Mr. Gossage in their efforts to reestablish themselves as productive members of society,

not increasing their likelihood of recidivism by placing barriers to reentry.

The State's position frustrates the Legislature's goals of fostering rehabilitation and facilitating reintegration. It is also inconsistent with the plain language of RCW 9.94A.637 and RCW 9.94A.760. Accordingly, the State's reading of these statutes should be rejected and Mr. Gossage should be issued a certificate of discharge.

2. THIS COURT SHOULD ADDRESS THE ISSUE OF RELIEF FROM REGISTRATION AS WELL AS MR. GOSSAGE'S PRO SE ISSUES.

In addition to a certificate of discharge, Mr. Gossage requests an evidentiary hearing on his motion for relief from the duty to register as a sex offender. See Opening Brief at 12-14; Reply Brief at 10-13.

Mr. Gossage also seeks restoration of his right to possess a firearm. See CP 20-43; Petition for Review at 1, 6-7; but see RCW 9.41.040(1), (4); RCW 9.41.010(12)(d), (h); RCW 9A.44.060; State v. Schmidt, 143 Wn.2d 658, 677-78, 23 P.3d 462 (2001). Finally, Mr. Gossage seeks vacation of his restitution order on an alternate theory from that espoused above: restitution was entered after the

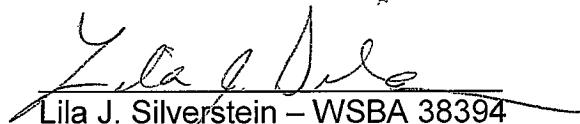
60-day time limit required when Mr. Gossage was sentenced.⁴ See CP 20-42; Petition for Review at 1, 4-5; RCW 9.94A.142 (1992); but see In re Personal Restraint of Fleming, 129 Wn.2d 529, 530-31, 919 P.2d 66 (1996).

C. CONCLUSION

For the reasons set forth above, Mr. Gossage respectfully requests a certificate of discharge. Mr. Gossage further requests an evidentiary hearing on his petition for relief from the duty to register. Finally, Mr. Gossage asks this Court to address his pro se issues, including reinstatement of his right to possess firearms and vacation of the restitution order for untimely entry.

DATED this 6th day of June, 2008.

Respectfully submitted,


Lila J. Silverstein – WSBA 38394
Washington Appellate Project
Attorneys for Petitioner

⁴ Mr. Gossage was sentenced on May 29, 1992, but the restitution order was not entered until August 31, 1992. CP 8, 65.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON


STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 80310-2
v.)	
)	
HENRY GOSSAGE,)	
)	
Petitioner.)	

CERTIFICATE OF SERVICE

I, MARIA ARRANZA RILEY, CERTIFY THAT ON THE 6TH DAY OF JUNE, 2008, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] ANN MARIE SUMMERS		
KING COUNTY PROSECUTING ATTORNEY	(X)	U.S. MAIL
APPELLATE UNIT	()	HAND DELIVERY
KING COUNTY COURTHOUSE	()	
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		
 [X] HENRY GOSSAGE	(X)	U.S. MAIL
9421 JOHNSTON PT LP NE	()	HAND DELIVERY
OLYMPIA, WA 98516	()	

SIGNED IN SEATTLE, WASHINGTON THIS 6TH DAY OF JUNE, 2008.

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